MONTANA LEGISLATIVE HISTORY

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H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2-17	✓C	Hearing Date(s)	3-15	✓C
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Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LC 0867

House BILL NO. 395

INTRODUCED BY Nilson Holmes Thuemmler Bradley
Drafter

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 4-412, 15-2006, 41-1429, 40-3329, 62-508, 66-112, 66-403.1, 66-510, 66-913, 66-1036, 66-1038, 66-1240, 66-1312, 66-1504, 66-1834, 66-1937, 66-2115, 66-2210, 66-2345, 66-2509, 66-2610, 66-2714, 66-3017, 66-3209, 75-6010, AND 93-2027, R.C.M. 1947, TO PROVIDE THAT A PERSON CONVICTED OF A CRIME AND IS NO LONGER UNDER STATE SUPERVISION IS RESTORED THE RIGHT TO PRACTICE ANY OCCUPATION REQUIRING STATE LICENSING; AND TO PROVIDE THAT A PERSON APPLYING FOR SUCH A LICENSE SHALL NOT BE DENIED A LICENSE BECAUSE OF A PREVIOUS CONVICTION."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 4-412, R.C.M. 1947, is amended to read as follows:

"4-412. Persons disqualified for license. (1) No license shall be issued by the board to:

~~1.~~ (a) A person who has been convicted of being the keeper or is keeping a house of ill fame.

~~2.~~ (b) A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.

~~3.~~ (c) A person whose license issued under this act has been revoked for cause.

~~4.~~ (d) A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

~~5.~~ (e) A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board.

~~6.~~ (f) A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.

~~7.~~ (g) A person who is not the owner and operator of the business.

(2) The board may not refuse to issue, refuse to renew, suspend, or revoke a license on the grounds of a past criminal conviction once state supervision of the offender has terminated."

Section 2. Section 15-2006, R.C.M. 1947, is amended to read as follows:

"15-2006. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under section

15-2014, unless he is registered under this act. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this act, or (2) he is registered as a broker-dealer under this act, or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer, salesman, acting as agents for an issuer or issuers or acting as agents for a broker-dealer in the sale of securities for an issuer or issuers or investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner shall prescribe and payment of the fee prescribed in section 15-2016. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least one (1) year next prior to the date of application for registration. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. Said bond to be in the sum of five thousand dollars ($5,000.00), payable to the state of Montana, and conditioned upon the faithful compliance with the provisions of this act, and shall provide that upon failure to so

comply the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subdivision (8) of this section, registration becomes effective at noon of the thirtieth (30th) day after an application is filed. The commissioner may specify an earlier effective date and he may by order defer the effective date for an additional sixty (60) days; the effective day after the filing of any amendment shall be noon of the thirtieth (30th) day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman or investment adviser shall be effective until the first (1st) day of March next following such registration and may be renewed as hereinafter provided. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman or investment adviser may be renewed by filing with the

commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under section 15-2013 (1), as may be prescribed by the commissioner. All records so required shall be preserved for three (3) years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations, within or without this state, by representatives of the commissioner, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a

broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but (a) the commissioner may not institute a revocation or suspension proceeding under this clause more than one (1) year from the date of the order relied on, and (b) he may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as

to the broker-dealer or investment adviser; or

(i) has not complied with a condition imposed by the commissioner under subdivision (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subdivision (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen (15) days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(11) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 3. Section 41-1429, R.C.M. 1947, is amended to read as follows:

"41-1429. Grounds for denial, suspension, or revocation of license. (1) The director may by order deny, suspend or revoke the license of any employment agency if he finds that the applicant or licensee:

~~(1)~~ (a) Was previously the holder of a license issued under this act, which was revoked for cause and never reissued by the director, or which license was suspended for cause and the terms of the suspension have not been fulfilled;

~~(2)~~ (b) Has been found guilty of any felony within the

past five (5) years involving moral turpitude, or for any misdemeanor concerning fraud or conversion, or suffering any judgment in any civil action involving willful fraud, misrepresentation or conversion;

~~(3)~~ (c) Has made a false statement of a material fact in his application or in any data attached thereto;

~~(4)~~ (d) Has violated any provisions of this act, or failed to comply with any rule or regulation issued by the director pursuant to this act.

(2) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 4. Section 40-3329, R.C.M. 1947, is amended to read as follows:

"40-3329. Suspension, revocation, refusal of license. (1) The commissioner may suspend for not more than twelve (12) months, or may revoke or refuse to continue any license issued under this chapter or any surplus line agent license if, after hearing held on not less than twenty (20) days advance notice by registered mail of such hearing and of the charges against the licensee given as provided in section 40-2711 (3) to the licensee and to the insurers represented (as to an agent) or to the appointing agent (as to a

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solicitor), he finds that as to the licensee any one or more of the following causes exist:

(a) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner.

(b) For obtaining or attempting to obtain any such license through misrepresentation or fraud.

(c) For violation of or noncompliance with any applicable provision of this code, or for willful violation of any lawful rule, regulation, or order of the commissioner.

(d) For misappropriation or conversion to his own use, or illegal withholding, of moneys or property belonging to policyholders, or insurer, or beneficiaries, or others and received in conduct of business under the license.

(e) Conviction, by final judgment, of a felony involving moral turpitude.

(f) If in the conduct of his affairs under the license the licensee has used fraudulent or dishonest practices, or has shown himself to be incompetent, untrustworthy or a source of injury and loss to the public.

(2) The license of a firm or corporation may be suspended, revoked or refused also for any of such causes as relate to any individual designated in the license to exercise its powers.

(3) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 5. Section 62-508, R.C.M. 1947, is amended to read as follows:

"62-508. Penalty for violations of law--power of board. (1) A person holding a race meet, and an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person willfully violating this chapter is guilty of a misdemeanor.

(2) The board may:

(a) exclude from any and all race courses in this state, any person whom the board deems detrimental to the best interests of racing; and

(b) suspend or revoke any license issued by the board to any person or assess a fine, not to exceed five hundred dollars ($500), against any person who violates any of the provisions of this act or any rule, regulation or order of the board.

(c) The board shall promulgate regulations implementing this act, including the right to a hearing for individuals against whom action is taken or proposed herein.

(3) It is lawful to conduct race meets at a race track

or otherwise, at any time during the week.

(4) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 6. Section 66-112, R.C.M. 1947, is amended to read as follows:

"66-112. Revocation of certificate. (1) The board may revoke a certificate if proof satisfactory to the board is presented of the following: (a) The certificate was obtained through fraud or misrepresentation; (b) The holder of the certificate has been found guilty by the board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice and is still under state supervision; (c) The holder of the certificate has been found guilty by the board of gross incompetency or of recklessness in the planning or construction of buildings; (d) The holder of the certificate has been found guilty by the board of any of the following acts which constitute unprofessional conduct: (i) Willful departure in a material respect from approved plans or specifications without the consent of the owner or his authorized representative; (ii) Willful violation of the building codes of this state or a political subdivision;

(iii) Aiding or abetting an unlicensed person to violate or evade this act; or (iv) Sealing or signing plans or specifications not prepared under his direct supervision and control; or (e) The holder of the certificate has violated standards of professional conduct adopted by the board.

(2) A certificate may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing.

(3) If the board's findings and conclusions are adverse to the accused, his certificate stands revoked and annulled at the expiration of thirty (30) days from the final decision adverse to the party.

(4) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 7. Section 66-403.1, R.C.M. 1947, is amended to read as follows:

"66-403.1. Refusal to issue, renew, or suspend licenses--hearing. The board may, after notice and opportunity for a hearing, either refuse to issue or renew, or may suspend or revoke a barbershop, or barber school or college license for any one or combination of the following causes:

(1) The violation of any of the provisions of subdivisions (a) through (e) of subsection 11 of section 66-403, subsection 12 of section 66-403, and section 66-405;

(2) Conviction of a felony, shown by a certified copy of the record of the court of conviction;

(3) Gross malpractice or gross incompetency;

(4) Continued practice by a person knowingly having an infectious or contagious disease;

(5) Advertising by means of knowingly false or deceptive statements;

(6) Advertising, practicing, or attempting to practice under a trade name other than one's own;

(7) Habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(8) The commission of any of the offenses described in section 66-409.

The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 8. Section 66-510, R.C.M. 1947, is amended to read as follows:

"66-510. Refusal and revocation of license--proceedings--reinstatement. (1) The board may revoke or

refuse to grant a license to practice chiropractic in this state, or may cause a licensee's name to be removed from the records in the office of the clerk and recorder in this state on the following grounds: The employment of fraud or deception in applying for a license or in passing an examination under this act; practice of chiropractic under a false or assumed name or the impersonation of another practitioner of like or different name; conviction of a crime involving moral turpitude; or habitual intemperance in the use of alcohol, narcotics, or stimulants to such an extent as to incapacitate him for the performance of his professional duties. A person who is a licensee, or an applicant for a license to practice chiropractic, against whom grounds for revoking or refusing a license is presented to the board with a view of having the board revoke or refuse to grant a license, shall have notice and a hearing before the board in respecting the guilt or innocence of the person.

(2) The board may within two (2) years of the refusal, revocation, or cancellation of registration under this section, by a majority vote, authorize the department to issue a new license or grant a license to the person affected, restoring him to or conferring on him the rights and privileges of the practice of chiropractic. A person to whom these rights and privileges have been restored shall

pay to the department the sum of fifty dollars ($50) on issuance of a new license.

(3) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 3. Section 66-913, R.C.M. 1947, is amended to read as follows:

"66-913. Revocation or suspension of license--grounds--conviction of crime--renting or loaning license--unprofessional conduct--proceedings for revocation or suspension. (1) A dentist may have his license revoked or suspended by the board for any of the following reasons:

(a) Conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction or a copy certified by the clerk of the court or by the judge in whose court the conviction is had is conclusive evidence.

(b) For renting, loaning, or attempting to rent or loan to a person his license for the practice of dentistry or his diploma of graduation from a dental college, school, or course to be used as a license or diploma of the person.

(c) For permitting a dental hygienist, under his personal supervision to do an act or perform an operation other than those defined and authorized under section

66-921.

(d) For permitting unlicensed auxiliary personnel to perform duties or tasks other than those which may be specifically authorized by the board.

(e) For unprofessional conduct, gross ignorance or inefficiency in his profession, habitual intemperance, or gross immorality.

(2) Unprofessional conduct consists of employing what are known as "cappers" or "steerers" to obtain business; obtaining a fee by fraud or misrepresentation; willfully betraying professional secrets; employing, directly or indirectly, a student or a suspended or unlicensed dentist to perform operations in the practice of dentistry, treat lesions of the human teeth or jaws, or correct malimposed formations; making use of advertising statements of a character tending to deceive or mislead the public; advertising prices; advertising professional superiority, or performance of professional services in a superior manner; advertising by means of a large display, glaring light sign, or other sign or device containing the representation of a tooth, teeth, bridgework, or a portion of the human head; advertising over television or radio; employing or making use of advertising solicitors or publicity press agents; advertising free dental work or free examination; advertising to guarantee dental service or to perform a

dental operation painlessly; advertising by sign or printed advertisements under the name of a corporation, company, association, or trade name.

(3) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction.

~~(3)~~ (4) Proceedings under this section may be taken by the board on its initial motion, for matters in its knowledge, or may be taken on the information of another. However, if the informant is a member of the board, the other members of the board constitute the board for the purpose of determining the truth of the charge or accusation. Accusations must be in writing, verified by some party familiar with the facts charged, and three (3) copies must be filed with the department. On receiving the accusation the board shall, if it considers the accusation sufficient, make an order setting it for hearing, and requiring the accused to appear and answer the charge or accusation at the hearing.

~~(4)~~ (5) The accused must appear at the time appointed in the order and answer the charges and make his defense unless for sufficient cause, on the accused's application or the board's order, the board assigns another day for that

purpose.

~~(5)~~ (6) If the accused does not appear the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge, or if on hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period. The board and the accused may have the benefit of counsel, and the board shall have the power to administer oaths, take depositions of witnesses in the manner provided by law in civil cases, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing, or proceeding in this state. The subpoena shall be issued over the signature of the secretary of the board and the seal, and in the name of this state.

~~(6)~~ (7) On revocation or suspension of a license the fact shall be noted on the records of the department and the license shall be marked canceled on the date of its revocation, or suspended, as the case may be. The department shall, on order of suspension or revocation being entered, transmit to the county recorder in which the license of the licensee affected by the judgment is registered and recorded, a copy of the order, certified by the secretary of the board, for record, and it shall be registered in the

same manner and in the same book in which the registration of the certificate to practice dentistry is kept."

Section 10. Section 66-1036, R.C.M. 1947, is amended to read as follows:

"66-1036. Refusal of license. (1) If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this act or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing, or if after hearing, the board determines he is not entitled to a license, the board shall refuse to grant the license.

(2) The board may not refuse to issue a license on the grounds of a past criminal conviction if the applicant is no longer under state supervision."

Section 11. Section 66-1038, R.C.M. 1947, is amended to read as follows:

"66-1038. Revocation or suspension of license--probation. (1) The board may, when it has been brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this

state:

(a) Is mentally or physically unable, safely, to engage in the practice of medicine, or has procured his license to practice medicine by fraud or misrepresentation or through mistake, or has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or when a condition exists which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) Has been guilty of unprofessional conduct;

(c) Has practiced medicine while his license was suspended or revoked; or

(d) Has, while under probation, violated its terms; make an investigation, including requiring the person to submit to a physical examination or a mental examination or both by a physician or physicians selected by the board when it appears in the best interests of the public that this evaluation be secured, to determine the probability of the existence of these conditions or the commission of these offenses. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall

mail to the person, at his last address of record with the department, a specification of the charges against him, together with a written citation of the time and place of the hearing on it, advising him that he may be present in person, and by counsel if he so desires, to offer evidence and be heard in his defense. The time fixed for the hearing shall not be less than thirty (30) days from the date of mailing the notice.

(2) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this sate, charging him with the commission of any of the offenses set forth in section 66-1037, or subsection one (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused, at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(3) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in section 66-1037, or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board does find that the conditions referred to in section

66-1037 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) Revoke his license;

(b) Suspend his right to practice for a period not exceeding one (1) year;

(c) Suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) Place him on probation; or

(e) Take any other action in relation to disciplining him as the board in its discretion considers proper.

(4) The department in cases of revocation, suspension, or probation shall enter in its records the facts of the action, and of subsequent action of the board with respect to it.

(5) On the expiration of the term of suspension, the licensee shall be reinstated by the board, if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or if not restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing, with notice and the

procedure provided in subsection (1) of this section. The revocation is final and absolute.

(6) If a person holding a license to practice medicine under this act is, by a final order or adjudication of a court of competent jurisdiction, adjudged to be mentally incompetent or insane, or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured, or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

(7) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 12. Section 66-1240, R.C.M. 1947, is amended to read as follows:

"66-1240. Grounds for discipline. The board, acting under the appropriate administration, may deny, revoke or suspend a license to practice nursing or discipline a licensee on proof that the person:

(1) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing

however, the right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction;

(2) Is guilty of a crime or gross immorality;

(3) Is unfit or incompetent by reason of negligence, habit, or other causes;

(4) Is habitually intemperate or is addicted to the use of habit-forming drugs;

(5) Is mentally or physically incompetent;

(6) Is guilty of unprofessional conduct;

(7) Has willfully or repeatedly violated this act; but only after compliance with section 66-1241."

Section 13. Section 66-1312, R.C.M. 1947, is amended to read as follows:

"66-1312. Revocation of certificate for cause. (1) The board may revoke a certificate of registration for conviction of crime, but the right to the certificate is restored by termination of state supervision of the offender. The board may also revoke any certificate for habitual drunkenness, contagious or infectious disease, gross immorality, gross ignorance or inefficiency in his profession, or unprofessional conduct. Unprofessional conduct includes obtaining a fee by fraud or

misrepresentation; employing directly or indirectly a suspended or unlicensed optometrist to perform work covered by this act; directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist, or accepting employment to practice optometry from a company or corporation, or accepting employment to practice optometry for a company or corporation; permitting another to use his certificate of registration; soliciting or sending a solicitor from house to house; treatment or advice in which untruthful or improbable statements are made; professing to cure disease; advertising in which ambiguous or misleading statements are made; or the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This act does not prohibit legitimate or truthful advertising by a registered optometrist. Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing."

Section 14. Section 66-1504, R.C.M. 1947, is amended to read as follows:

"66-1504. Powers of board and department. (1) The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) Regulate the practice of pharmacy in this state subject to this act;

(b) Determine the minimum equipment necessary in and for a pharmacy and drug store;

(c) Regulate under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) Regulate the quality of drugs and medicines dispensed in this state, using the United States pharmacopoeia and the national formulary, or revisions thereof, as the standards;

(e) Request the department to enter and inspect at reasonable times places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) Regulate the practice of interns under national standards;

(g) Revoke temporarily or permanently, licenses issued by the department to a pharmacist or intern whenever the holder of the license has obtained it by false representations or fraud, is an habitual drunkard or addicted to the use of narcotic drugs, has been convicted of a felony, has been convicted of violating the pharmacy law,

or has been found guilty by the board, of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or assistant.

(n) Make rules for the conduct of its business.

(i) Perform other duties and exercise other powers as this act requires.

(j) Adopt and authorize the department to publish rules for carrying out and enforcing this act.

(3) The department shall license, register, and examine, subject to section 82A-1603, applicants whom the board considers qualified under this act; license pharmacies and certain stores under this act; and issue certificates of "certified pharmacy" under this act.

(4) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 15. Section 66-1834, R.C.M. 1947, is amended to read as follows:

"66-1834. Revocation or suspension of certificate, or registration or license. (1) After notice and hearing as provided in section 24 [66-1836] of this act, the board may revoke, or may suspend any certificate issued under section

7 [66-1819] of this act, or any registration granted under section 8 [66-1820] of this act, or may revoke, suspend or refuse to renew any license issued under section 21 [66-1833] of this act, or may censure the holder of any such license, for any one or any combination of the following causes:

(a) Fraud or deceit in obtaining a certificate as certified public accountant, or in obtaining a license to practice public accounting under this act;

(b) Dishonesty, fraud or gross negligence in the practice of public accounting;

(c) Violation of any of the provisions of section 26 [66-1838] of this act;

(d) Violation of a rule of professional conduct promulgated by the board under the authority granted by this act;

(e) Conviction of a felony under the laws of any state or of the United States;

(f) Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(g) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state, for any cause other than failure to pay an annual registration

fee in such other state;

(h) Suspension or revocation of the right to practice before any state or federal agency;

(i) Failure of a certificate holder or licensed accountant to obtain an annual license under section 21 [66-1833], within either (a) three (3) years from the expiration date of the license to practice last obtained or renewed by said certificate holder or registrant, or (b) three (3) years from the date upon which the certificate holder or licensed accountant was granted his certificate or registration, unless such failure shall have been excused by the board pursuant to the provisions of section 21 [66-1833].

(2) The right to any certificate, registration or license, revoked or suspended under the provisions of section (1) (e) or (1) (f), is restored by termination of state supervision of the offender and any person applying for a license, certificate, or registration shall not be denied a license because of a previous criminal conviction."

Section 16. Section 66-1937, R.C.M. 1947, is amended to read as follows:

"66-1937. Grounds for refusal--suspension or revocation of license. The board may, on its own motion, and shall, on the sworn complaint in writing of a person, investigate the actions of a real estate broker or a real

estate salesman, subject to sections 82A-1603 and 82A-1604, and may revoke or suspend a license issued under this act when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) Intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted;

(2) Making any false promises of a character likely to influence, persuade, or induce;

(3) Pursuing a continued and flagrant course of misrepresentation, or making false promises through agents or salesman, or any medium of advertising, or otherwise;

(4) Use of the term "realtor" by a person not authorized to do so, or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) Failing to account for or to remit money coming into his possession belonging to others;

(6) Accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) Acting in a dual capacity of broker and

undisclosed principal in a transaction;

(8) Guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) Offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) Inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) Accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) Negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written outstanding contract in connection with the property, granting an exclusive agency to another broker;

(13) Soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) Representing or attempting to represent a real

estate broker, other than the employer, without the express knowledge or consent of the employer;

(15) Failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) Paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this act;

(17) Intentionally violating a rule adopted by the board in the interests of the public and in conformity with this act;

(18) Failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) Demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) Conviction of a felony. The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 17. Section 66-2115, R.C.M. 1947, is amended

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to read as follows:

"66-2115. Regulation of abstracters--violations. (1) The board may cancel and revoke a certificate of registration issued to a person under this act for a violation of this act, or on a conviction of the holder of the certificate of a crime involving moral turpitude, or if the board finds the holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a certificate of authority issued to a person, firm, or corporation under this act for failure to furnish the bond or other securities required by section 66-2113, or new or additional bonds the board considers necessary, or for failure to maintain indices and abstract records, or for failure to have in charge of the business a registered abstracter, or for violation of this act.

(2) On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) of this section the board shall require the holder of the certificate to appear before it on a day fixed by the board, to show cause why the certificate should not be canceled.

(3) The right to a certificate of registration revoked or suspended because of a criminal conviction is restored by

termination of state supervision of the offender and any person applying for a certificate of registration shall not be denied a certificate because of a previous criminal conviction."

Section 18. Section 66-2210, R.C.M. 1947, is amended to read as follows:

"66-2210. Refusal, suspension, and revocation of license and certificate. (1) The board may either refuse to grant a license or refuse to grant a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) Fraud or deception in procuring the license.

(b) The publication or use of an untruthful or improper statement, or representation with the view of deceiving the public, or a client or customer in connection with the practice of veterinary medicine.

(c) The conviction of a felony as shown by a certified copy of the record of the court of conviction.

(d) Habitual intemperance in the use of intoxicating liquors, or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs, or conviction of a violation of a federal or state law relating to narcotic drugs.

(e) Immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing

veterinary medicine.

(f) Gross malpractice, including failure to furnish to the board, on written application by it, a report or information relating thereto.

(g) The employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine.

(h) Fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates.

(i) Failure to keep one's premises in a clean and sanitary condition.

(j) Violation of this act or of the rules or orders of the board.

(k) Revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may neither refuse to issue a license or certificate of registration nor suspend or revoke a license and certificate of registration for any cause, unless the person accused has been given notice and a public hearing by the board.

(3) The right to a license or certificate of registration revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license or

certificate of registration shall not be denied a license or certificate of registration because of a previous criminal conviction."

Section 19. Section 66-2345, R.C.M. 1947, is amended to read as follows:

"66-2345. Revocation of registration--hearings--reissuance of certificate. (1) The board may revoke, reprimand, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) Fraud or deceit in obtaining a certificate of registration;

(b) Gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor;

(c) A felony; or

(d) Failure of a land surveyor to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, and subscribed and sworn to by the person making them, and filed with the department.

(3) Charges, unless dismissed by the board as unfounded or trivial, shall be heard by the board within three (3) months after the date on which they were made.

(4) If, after hearing, four (4) or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked, if four (4) or more members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board, and a charge of three dollars ($3) shall be made for the issuance.

The right to a certificate revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a certificate shall not be denied a certificate because of a previous criminal conviction."

Section 20. Section 66-2509, R.C.M. 1947, is amended to read as follows:

"66-2509. Refusal to issue or renew license--grounds. (1) The board, after due notice and hearing, may refuse to license any applicant, and may refuse to renew the license of any licensed person:

~~(1)~~ (a) Who is habitually intoxicated or who is

addicted to the use of narcotic drugs;

~~(2)~~ (b) Who has been convicted of violating any state or federal narcotic law;

~~(3)~~ (c) Who is, in the judgment of the board, guilty of immoral or unprofessional conduct;

~~(4)~~ (d) Who has been convicted of any crime involving moral turpitude;

~~(5)~~ (e) Who is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

~~(6)~~ (f) Who has obtained or attempted to obtain registration by fraud or material misrepresentation;

~~(7)~~ (g) Who has been declared insane by a court of competent jurisdiction and has not thereafter been lawfully declared sane;

~~(8)~~ (h) Who has treated or undertaken to treat ailments of human beings otherwise than by physical therapy, or who has undertaken to practice physical therapy independent of prescription from a person who holds an unlimited license to practice medicine and surgery in the state of Montana and other states and territories.

(2) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 21. Section 66-2610, R.C.M. 1947, is amended to read as follows:

"66-2610. Revocation and suspension. (1) A license issued under this act may be suspended or revoked by the board, in cases other than failure of a licensee to renew the license, after notice and hearing, in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license, for the practice of fraud or deceit in obtaining a license, for gross negligence, incompetence, conviction of a felony, or violating the requirements of this act. Any person may make complaint against a licensee. Complaints shall be in writing, signed by the complainant, and must specify the charges against the licensee. The board, on its own motion, or on receipt of a complaint, shall hold a hearing on charges.

(2) A person bringing the complaint has the burden of proof and must appear in person. A unanimous vote of the board is required in order to revoke or suspend a license. If a suspension is directed by the board, it may not be for a period in excess of one (1) year.

(3) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a

previous criminal conviction."

Section 22. Section 66-2714, R.C.M. 1947, is amended to read as follows:

"66-2714. Refusal to grant, suspension and revocation of mortician's and funeral director's license. (1) The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

~~(1)~~ (a) If the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license, or in passing the examination.

~~(2)~~ (b) If the applicant or licensee has been convicted of a felony.

~~(3)~~ (c) If the applicant or licensee has violated any section of this act or any rule or regulation of the state, district, or local board of health governing the disposition of dead human bodies, or any rule of the board regulating the professions of mortuary science or funeral directing, or the operation of a mortuary.

~~(4)~~ (d) If the licensee has participated in any scheme in the nature of a burial association or burial certificate plan which does not properly protect the rights of the public, or where there is any element of fraud, or where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom

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of choice as to the services or merchandise used in connection with a funeral, or the freedom of choice as to which funeral directors or morticians shall be employed.

(2) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction."

Section 23. Section 66-3017, R.C.M. 1947, is amended to read as follows:

"66-3017. Revocation or suspension for cause. Any person registered under this act may have his license revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(1) Being convicted of a felony. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or by the judge of the court, shall be sufficient evidence to warrant revocation or suspension~~;~~. ~~provided that the person has not been pardoned by a governor or the president of the United States;~~

The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license shall not be denied a license because of a previous criminal conviction.

(2) By securing a license under this act through fraud or deceit or false statements.

(3) For the personal use of a false name or alias in the practice of his profession, with fraudulent intent.

(4) For violating any of the provisions of this act.

(5) For obtaining any fee or making any sale by fraud or misrepresentation.

(6) Knowingly employing directly or indirectly any suspended or unlicensed person to perform any work covered by this act.

(7) Using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or any other representation however disseminated or published, which is improbable, misleading, deceptive, or untruthful.

(8) Representing that the services or advice, of a person licensed to practice medicine, or possessing certification as an audiologist, will be used or made available in the selection, fitting, adjustment, maintenance or repair of hearing aids when that is not true, or using the terms "doctor," "clinic," "state registered," or other like words, abbreviations or symbols which tend to connote the medical profession when that use is not accurate. The term "hearing center" shall be discontinued in accordance with the code of ethics of the National Hearing Aid Society.

(9) Permitting another to use his license or certificate.

(10) To defame competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely to disparage the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies or services.

(11) To obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other lawful means.

(12) To directly or indirectly give, or offer to give, or permit or cause to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser, or to influence persons to refrain from dealing in the products of competitors.

(13) Unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers.

(14) Selling a hearing aid to a person who has not

been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids."

Section 24. Section 66-3209, R.C.M. 1947, is amended to read as follows:

"66-3209. Grounds for refusal or revocation of license--hearing. (1) A license applied for, or issued under this act, may be refused or revoked by the board on proof that the person to whom the license was issued:

(a) Has been convicted of a felony;

(b) Has been guilty of fraud or deceit in securing the license or a renewal; or

(c) Is using a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(d) Has been guilty of unprofessional conduct as defined by the code of ethics published by the American Psychological Association.

(2) The board may not revoke or refuse to issue or renew a license for any cause, other than failure to pay fees, unless the person is given notice and opportunity for a hearing before the board.

(3) The right to a license revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying

for a license shall not be denied a license because of a previous criminal conviction."

Section 25. Section 75-6010, R.C.M. 1947, is amended to read as follows:

"75-6010. Suspension, revocation and denial--appeals. The board of education shall have the power and authority to suspend or revoke the teacher certificate of any person for any of the following reasons:

(1) Any reason that would have required or authorized the denial of the teacher certificate to such person if it had been known at the time such certificate was issued;

(2) By reason of incompetency, immorality, intemperance, physical inability, or conviction of a felony under state law; or

(3) By reason of the failure of the certificate holder to comply with the terms of any contract between such holder and the trustees of a district without the consent of the trustees in writing or without good cause. Such breach of contract shall constitute unprofessional conduct.

Whenever a substantial reason for the suspension or revocation of the teacher certificate of any person is brought to the attention of the board of education, it shall afford the person an opportunity to defend himself and his qualifications against the charge before the board. The superintendent of public instruction shall give a thirty

(30) day written notification to any person when the board of education intends to consider the suspension or revocation of his certificate. The board of education shall implement an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board of education policies.

After a full investigation and proper hearing, the board of education may suspend or revoke the person's teacher certificate, except that in cases of a first violation under subsection (3) above, the maximum penalty shall not be more than a suspension of the person's certificate for the current school fiscal year and the ensuing school fiscal year.

Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher certificate to a person, he may appeal the denial to the board of education. The appeal shall be heard in the same manner provided for in this section for suspension or revocation and in accordance with the policies of the board of education. The decision of the board of education shall be final.

The right to a teacher certificate revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying

for a teacher certificate shall not be denied a license because of a previous criminal conviction."

Section 26. Section 93-2027, R.C.M. 1947, is amended to read as follows:

"93-2027. Conviction of crime. In case of the conviction of an attorney and counselor of a felony or misdemeanor, involving moral turpitude, the clerk of the court in which such conviction is had shall, within thirty days thereafter, transmit to the supreme court a certified copy of the record of conviction.

The right to a license to practice law revoked or suspended because of a criminal conviction is restored by termination of state supervision of the offender and any person applying for a license to practice law shall not be denied such a license because of a previous criminal conviction."

-End-

HB 395

1975
House

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 372	To provide for the determination of inheritance tax involving life estates, joint tenancies, & other taxable interests where no personal rep. is appointed, etc.	1/28/75	Yardley	2/12/75	DO PASS AS AMENDED	2/15/75
HB 375	To abolish miscellaneous fees for justices of the peace & repealing section 25-304, R.C.M. 1947.	1/28/75	Helmbrecht	2/12/75	DO PASS	2/15/75
HB 376	To implement article II, section 15 of the Mt. Constitution, enumerating other rites of juveniles & providing an opportunity for high school students to become aware, etc.	1/28/75	Huennekens	2/12/75	DO NOT PASS	2/15/75
HB 383	To require the PSC to hold hearings on proposed changes in schedules when there are adverse parties, & to render decisions in such contested cases in conformity, etc.	1/28/75	Meloy	2/10/75	DO PASS AS AMENDED	2/10/75
HB 393	Amending sections relating to the Mt. Uniform Probate Code & Repealing Sections 91A-6-103, etc.	1/28/75	James Moore	2/14/75	DO PASS	2/14/75
HB 395	Amending sections to provide that a person convicted of a crime & is no longer under state supervision is restored the right to practice any	1/28/75	Meloy	2/17/75	AS SO AMENDED DO PASS	2/21/75

February 17, 1975

The thirty third meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Monday, February 17, 1975 at 9:00 AM. Representative Herb Huennekens, Chairman, presided. All members were present except Representative Lory, absent, excused.

Bills scheduled for hearing this date were House Bills Nos. 651, 395, 494 and 496 and they were heard in this order.

HOUSE BILL NO. 651 Representative Robert Sivertsen, District #7, is chief sponsor of this act to be known as the Montana Auto Accident Reparations Act; providing a no-fault insurance system for the state of Montana. He stated he feels this bill represents a reasonable approach to no-fault. Five states have some type of no-fault insurance. This is a consumer oriented bill as he is interested in keeping rates down to a level where the majority of people may participate. The tort limitation is $1,000. The bill excludes motorcycles. Bill provides for a choice on amount of protection a policyholder can purchase above a certain level. He explained the bill by sections to the committee.

Proponent Jim Murphy, representing a trade association of insurance companies, stated they represent sixty percent of the total insurance premiums in the United States. He stated UMVARA was a theoretical approach to insurance and it was all theory. They have seen some problem areas encountered within the approximate twenty five states that have some type of no-fault insurance. One thing is a broad escape provision which should be in any no-fault program. Policy should cover traveling in other states.

Proponent Everett Snortland, representing Montana Farm Bureau, suggested an amendment to provide an effective date. The Farm Bureau policy reflects they are for a modified no-fault bill. Proponent Jim Sewell, representing the American Mutual Insurance Alliance, stated they still support HB 111.

Representative Sivertsen, in closing, stated he thinks one of the major concerns is that this is something we no doubt need. He wants to include as many people as possible in the coverage.

Following very brief questioning the hearing was closed.

HOUSE BILL NO. 395 Representative Mike Meloy, District #29, is chief sponsor of this act to provide that a person convicted of a crime and is no longer under state supervision is restored the right to practice any occupation requiring state licensing and to provide that a person applying for such a license shall not be denied a license because of a previous conviction.

Representative Meloy stated this past year he served on a Montana Bar Association committee on correction faciliti and services. Many are concerned with offenders and ex-offenders an the difficulty they are having getting jobs. One of the problems is the policy of the state of Montana which prohibits the issuance of a license in the event the person was convicted of a crime. There has been a whole series of restrictions which are contained in the bill which prohibit him from getting work in the profession he had before being convicted. The new constitution directly addresses the proble in Section 28 of Article II. The thrust of the provision addresses the reason for this bill. The state should not have these road bloc once he has paid his debt to society. The intent of this language is to change the state law so the licensing authority may not refuse to license an individual on the grounds that he was convicted. The language is pretty standard throughout the bill.

Proponent Bob Campbell, chairman of the Montana Bar Association Correctional Facilities and Service Committee, also a Constitutional Convention delegate, stated the restrictions basica are unconstitutional. The bill would be the first step in implement licensing provisions which are now in the state. A hearing was cond in the Senate chambers December 7, 1974 in relation to this problem. Following this hearing this bill was prepared which they feel will implement the constitutional provision. He provided each committee member with several letters supporting this bill. Mr. Campbell stat they feel this bill is especially important to young people, that it is essential to provide for these people to get back into the system

Proponent Ernie Post, representing the AFL-CIO, stated they feel this bill will be a major step in improving the lif of those who might have only one more opportunity. They feel they h paid their debt to society, should look at them as individuals. Fee it is important to remove these restrictions.

Proponent Lee Topash, area representative for t Human Resources Development Council, stated he works with the prison in trying to set up training programs. They will be subcontracting with the Department of Labor under apprenticeship program. Feels th former convict would not be restricted in motivation and incentive.

Proponent John Frankino, representing the Monta Catholic Conference, stated the Catholic Conference supported Articl 28, Section II of the Constitution. He stated limiting the convicts will lead to neither acceptance or rehabilitation.

No other proponents. No opponents. Representat Meloy, in closing, stated this bill is no panacea, it does not addre the problem an offender has with the private employers. Does not address even the problem of state licensing board denying the license on a prior conviction. If the board doesn't want to license they wi find a reason. Feels it is the obligation of this legislature to se

that the board shall not deny licensing on the basis of a convictio

An opponent to bill, a Mr. Erickson, arrived l and requested permission to oppose this bill. He talked about the bill as it deals with teachers, it is the only licensing provision that deals with public employees. Stated they are concerned about morals of those working with young people. Requested committee to look at part dealing with teachers very carefully.

In closing again, Representative Meloy alluded to and read a recommendation from Warden Roger Crist. (see prepare testimony) Suggested you might allow the man to teach in an all bo school.

Ernie Post stated he would like to make one po Right now you have people that have been practicing occupations, th can get a pardon, you have people teaching now. All ex-offenders d not have the same political pull.

Representative Halvorson stated she finds it difficult to equate all these people within the same bill. Mr. Cam replied if the professionally related offenses that are the subject the crime, the licensing occupation board can refuse to license the in this but not necessarily in another occupation. If there was pr fessional misconduct then they can be considered to not license the

Following several questions by committee membe Representative Meloy reminded the committee to not confuse the gran of a license with getting a job. When he goes to get his job the c viction follows him into the office and the employer can refuse to hire him.

Representative Kimble stated this bill has in- grained bias against those people commonly convicted of drugs and s crimes. The white collar felon might be objecting to his philosoph It should be stated with basic premises that all crimes should put a person equal of opportunity for all people in the state. Feels i is best to say by law there are no continuing restrictions. Feels this is the most important prison reform bill before this session, the offender will be judged on their own capabilities.

Hearing was then closed.

HOUSE BILL NO. 494 Representative James Moore, District #18, is chief sponsor of this bill designed to give so relief to the committee. The bill is an act to amend by granting a injured employee an independent action against a grossly negligent employer. Under the terms of the workmen's compensation provision they have exclusive remedy - limits amount of previous wage which y can recover. There are also noneconomic losses which are serious losses. He stated he had talked with Norman Grossfield and there i

NAME Robert J. Campbell Bill No. 395

ADDRESS 501 Date Feb.

WHOM DO YOU REPRESENT? Montana Bar Ass'n Correctional Facilities and Services Committee.

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

MONTANA Correctional Facilities and Services Committee

MONTANA BAR ASSOCIATION

501 Western Bank Building • Missoula • Montana •59801 • Ph. 543-3005

H. B. 395--HOUSE JUDICIARY COMMITTEE HEARING

TESTIMONY--MBA CORRECTIONAL FACILITIES AND SERVICES COMMITTEE

February 17, 1975

The Montana Bar Association's Correctional Facilities and Services Committee fully supports the implementation of Section 28 of Article II of the Montana Constitution entitled "RIGHTS OF THE CONVICTED", which states as follows:

> "FULL RIGHTS ARE RESTORED BY TERMINATION OF STATE SUPERVISION FOR ANY OFFENSE AGAINST THE STATE."

H. B. 395 provides the necessary first step in implementing this provision by removing from our licensing statutes the unconstitutional restrictions in which ex-offenders are now forbidden to ever engage in 33 occupations licensed by the state which are listed on the attached sheet.

Our Committee has received a wide variety of suggested improvements in our criminal justice system and has held a public hearing in the Montana Senate Chambers on December 7, 1974. From the best sources currently available we have concluded that this Bill is the most important single piece of legislation this session to improve criminal justice in Montana.

This Bill provides opportunities for reducing criminal behavior by providing the opportunity for meaningful employment for ex-offenders and is supported by the following organizations and individuals:

> The Honorable Thomas Judge, Governor of Montana
> Roger Crist, Warden, Montana State Prison

H. B. 395--HOUSE JUDICIARY COMMITTEE HEARING

TESTIMONY--MBA CORRECTIONAL FACILITIES AND SERVICES COMMITTEE

February 17, 1975

The Montana Bar Association's Correctional Facilities and Services Committee fully supports the implementation of Section 28 of Article II of the Montana Constitution entitled "RIGHTS OF THE CONVICTED", which states as follows:

> "FULL RIGHTS ARE RESTORED BY TERMINATION OF STATE SUPERVISION FOR ANY OFFENSE AGAINST THE STATE."

H. B. 395 provides the necessary first step in implementing this provision by removing from our licensing statutes the unconstitutional restrictions in which ex-offenders are now forbidden to ever engage in 33 occupations licensed by the state which are listed on the attached sheet.

Our Committee has received a wide variety of suggested improvements in our criminal justice system and has held a public hearing in the Montana Senate Chambers on December 7, 1974. From the best sources currently available we have concluded that this Bill is the most important single piece of legislation this session to improve criminal justice in Montana.

This Bill provides opportunities for reducing criminal behavior by providing the opportunity for meaningful employment for ex-offenders and is supported by the following organizations and individuals:

The Honorable Thomas Judge, Governor of Montana
Roger Crist, Warden, Montana State Prison
Robert T. O'Leary, Chairman, Board of Pardons
J. H. Baumgart, Probation Dept., Central Division Supervisor

MONTANA Correctional Facilities and Services Committee

MONTANA BAR ASSOCIATION

501 Western Bank Building • Missoula • Montana •59801 • Ph. 543-3005

Pete Giono, E.E.O. Chief, Personnel Division
Lee Topash, Area Representative AFL-CIO
North American Indian League
Blackfeet Tribe
Montana Jaycees
Montana Catholic Conference
League of Women Voters

This measure will fulfill the Constitutional guarantee that individuals, after serving a sentence, will be considered on their own ability and not be permanently barred from occupations in which they are qualified to work.

Your support of this Bill will be a first step in fulfilling our Constitutional promise to provide equality of opportunity for all the citizens of our state.

Robert J. Campbell

Robert J. Campbell, Chairman
Montana Bar Association
Correctional Facilities & Services Committee
501 Western Bank Building
Missoula, Montana 59801

Area Code 406 543-3005

MONTANA Correctional Facilities and Services Committee

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RESTRICTED LICENSED OCCUPATIONS

(1) Liquor License Holders
(2) Artificial Inseminators
(3) Architects
(4) Barbers
(5) Chiropractors
(6) Dentists
(7) Doctors
(8) Nurses
(9) Optometrists
(10) Pharmacists
(11) Accountants
(12) Real Estate Brokers and Salesmen
(13) Title Abstractors
(14) Veterinarians
(15) Professional Engineers
(16) Land Surveyors
(17) Physical Therapists
(18) Morticians
(19) Hearing Aid Distributors
(20) Psychologists
(21) Attorneys
(22) Teachers
(23) Employment Agents
(24) Funeral Directors
(25) Insurance Adjusters
(26) Insurance Agents
(27) Insurance Raters
(28) Insurance Solicitors
(29) Investment Advisors
(30) Race Horse Jockeys, Trainers
(31) Stock Brokers, Salesmen
(32) Water Well Contractors
(33) Food Distributors

THOMAS L. JUDGE
GOVERNOR

State of Montana
Office of The Governor
Helena 59601

November 1, 1974

Mr. Robert J. Campbell
Attorney at Law
501 Western Bank Building
Missoula, Montana 59801

Dear Bob:

Thank you for your letter of October 23, 1974.

I have talked with Lee Tickell concerning the implementation of Article II, Section 28 of Montana's 1972 Constitution. The Personnel Division is proceeding with an affirmative action plan that will fully implement this constitutional provision. Lee will be contacting you within the next few days to advise you as to who will be appearing to explain the Division's activities in this area.

Sincerely,

THOMAS L. JUDGE
Governor

cc: Lee J. Tickell

STATE OF MONTANA

THOMAS L. JUDGE
GOVERNOR

BOBBY C. MILES, DIRE
INTERSTATE COMPACT ADM
DEER LODGE

BOARD OF PARDONS

PHONE 846-1404 -:- 1119 MAIN STREET
DEER LODGE, MONTANA 59722

December 17, 1974.

Mr. Robert Campbell, Chairman
Montana Bar Association Correctional Services Committee
501 Western Building
Missoula, Montana 59801

Dear Mr. Campbell:

Please be advised that we heartily endorse the effort as proposed by the committee to remove any license restrictions from the State of Montana statutes such as are debilitative in nature and in opposition or counter-productive to our main goals in corrections. We believe that the current imposed occupational restrictions of convicted felons in the State of Montana are not founded on sound principles for reformation and do not deter convicted felons from committing further crimes, but rather initiate cause for committing new crimes.

We earlier proposed to the Constitutional Convention Committee that the rights of the convicted felon be protected and were pleased that Section 28, as it pertains to those rights, was adopted by the committee and later ratified by the people on June 6, 1972. Therefore, we support any proposed legislative action to remove any occupational license restrictions such as are not required to protect society.

Sincerely yours,

BOARD OF PARDONS

Robert T. O'Leary

Robert T. O'Leary, Chairman

RTO/tw

GER W. CRIST, WARDEN

Montana State Prison

OFFICE OF THE WARDEN
DEER LODGE, MONTANA
59722

Nov. 26, 1974

Bob Campbell, Chairman
Montana Bar Association Committee On
Correctional Facilities & Services
501 Western Bank Building
Missoula, Montana 59801

Dear Bob:

I am sorry that I will be unable to be at the public hearing in Helena on Saturday, Dec. 7, 1974. We are, however, attempting to arrange to have an inmate present at the hearing so that he may be able to express the position of the inmates firsthand.

As you know, I have real strong feelings about the need for employment for men once they leave the institution, and even more specifically, the need to remove unwarranted legal restrictions in the area of employment. With our economy the way it is, it is going to be even more difficult for inmates to find jobs without the added burden of legal restrictions.

I would like to cite two actual cases where former inmates lost their livelihood as the result of legal or licensing restrictions. The two cases I remember best, both happened to be teachers and I think they will serve to illustrate the point.

The first individual was the principal at a grade school who, over a 3-year period of time, embezzled lunch money funds. He was sent to the state prison where he served a 3-year sentence. This man had never committed any type of offense before. He had to sell his house and all personal possessions in order to make restitution. Two of his children had to drop out of college. His family had to obtain rental housing, and his wife went to work in a restaurant behind a steam table. When he was released from the institution, he had to seek employment as a used-car salesman because state law prevented him from ever teaching again. I think that this was a real tragedy in that the man was recognized as a tremendous teacher and a good administrator who had made one serious slip. He didn't deny his guilt, nor did he make excuses. He did, however, pay a terrible price. The end result of the situation was that he lost the respect of his wife and children. His wife finally divorced him; he was forced into an occupation he knew nothing about, and was denied the right to practice the profession he had worked years to prepare himself for.

The second example that comes readily to my mind was a more difficult case in that it involved a music teacher in his early 20's who became sexually involved with a 17-year old female student. At the time of the incident, his wife, who was a registered nurse, was residing in another city over a long period of time taking care of her mother who was seriously ill. The 17-year old girl was very mature for her age and willingly entered into the involvement. After serving two or three years in prison, this man was able to get his own family functioning again, but he was unable to teach in the schools.

Now, granted, I can readily understand parents being concerned about a teacher teaching one of their children when it was known that he had been sexually involved with a female student in the past. This case, however, could have been handled on an individual basis. I think you can make a strong point by the fact he had never been involved, or showed no inclination to be involved sexually with male students. Why then would it not be possible to allow him to teach at an all boys' school rather than take away his ability to make a living in the teaching field completely?

I guess this is a long way of saying that rather than restrict people from an occupation on a blanket basis because they have been convicted of a felony, the law should be changed so that the individual situation can be taken into consideration and some adjustments made.

Very truly yours,

Roger W. Crist

ROGER W. CRIST, WARDEN

RWC/mm
cc: Joe Yankoskie, Director
Classification & Treatment

STATE OF MONTANA

OMAS L. JUDGE
GOVERNOR

BOBBY C. MILES, DIRECTOR
INTERSTATE COMPACT ADMINISTR
DEER LODGE

BOARD OF PARDONS

PHONE 846-1404 -:- 1119 MAIN STREET
DEER LODGE, MONTANA 59722

December 10, 1974

Mr. Robert Campbell, Chairman
Montana Bar Associations Correctional Facilities & Services Committee
501 Western Building
Missoula, Montana 59801

Attn: Mr. John Navarro

Dear Sir:

After my telephone conversation with Mr. John Navarro on December 5, 1974 concerning your efforts to have legislation passed this coming year to remove the statutes which prohibit offenders and ex-offenders from engaging in thirty four (34) different occupations in the State of Montana; I discussed your proposal at the Staff Meeting of the Central Division Parole Officers on December 6, 1974, and they are in favor of supporting such legislation.

Very truly yours,

J. H. Baumgart

J. H. Baumgart
Central Division Supervisor

cc: Board of Pardons
Mr. Henry Burgess
Bernie Driscoll
A. J. Marra
Sam Wilson
Richard Holzheimer
J. J. Skiba
File

TESTIMONY OF:
LEE TOPASH, AREA REPRESENTATIVE
HRDI-AFL-CIO-HELENA
DECEMBER 7, 1974

I am the Montana Area Representative for HRDI (The Human Resources Development Institute). Montana is one of 56 area HRDI offices throughout the country, including Alaska. HRDI is the manpower arm of the AFL-CIO and has been given a special role: to utilize the talent and experience available within the trade unions of America to develop effective programs for helping unemployed and disadvantaged men and women to develop the skills needed to get and to keep jobs paying decent wages. Under contract with the U.S. Department of Labor's Manpower Administration, the major thrust of HRDI is in support of federally-funded manpower programs in the area of job development and job placement.

HRDI concentrates on developing training opportunities and job opportunities for men and women whose chances for dignified and useful employment have been barred for many reasons: lack of skills, insufficient education, discrimination because of color or race, language barriers or any of the other reasons that may keep American working people from realizing their full potential.

My remarks are focused on three factors that I feel are necessary for any type of rehabilitation to become a reality -- self confidence, motivation, and access to opportunity. A person has to have self confidence to be motivated in order to have access to any opportunity.

I am currently coordinating efforts with the Montana State Prison and NAIL (The North American Indian League) in job assistance so inmates may find parole. NAIL is a "self-help" group made up of Indian inmates within the prison.

Recently a Project called HOIST was implemented at the prison. HOIST is Highway Occupations Introduced by Specialized Training, describing the constructio

industry in detail. The program does not promise jobs to anybody. Union business agents explain each craft and what role the union plays in that field. The Montana Contractors Association, through Terry Bass, discussed job interviews, and businessmen from Missoula talked consumer education. The interest shown by the 12 inmates attending the program was most encouraging. By having people come in from all over the state offering access to opportunity, it lets the inmates know that there are people who really do care and this helps the inmates build confidence in themselves.

One interesting item kept coming up. The training programs inside the walls are not doing what they are intended to do. There is no incentive on the inmates part to enter a training program knowing it probably won't result in a job that would allow parole. HRDI and the Montana State AFL-CIO believes proper training through apprenticeship or pre-apprenticeship at the prison is a positive means of vocational education. Apprenticeship has proven the most effective way of learning a trade.

Why am I talking about pre-employment training and apprenticeships? If a person has confidence in himself to learn a trade and is motivated toward the opportunity, all possible barriers should be removed, and of interest to us today is licensing. A new prison will be built and more vocational education will be emphasized. But what good is confidence, motivation and opportunities if a person is released and finds his dreams and hopes are shattered because a law will not allow him to be licensed?

If we expect these people to have self-confidence we have to have confidence in them. If they are to be motivated, we must encourage motivation. If they are to have access to opportunity, it is our obligation to allow these people as human beings to have that opportunity.

NAME Ernest Pack Bill No. HB-395

ADDRESS P.O. Box 1176 Date _____

WHOM DO YOU REPRESENT? mt Ida AFL-CIO

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME John Tooker Bill No. 395

ADDRESS Box 404 Date

WHOM DO YOU REPRESENT? Mont. Cath. Conf.

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

NAME G W Erickson Bill No. HB 339

ADDRESS 411 S 19th Bozeman Date 2/17/75

WHOM DO YOU REPRESENT? Mont Assn of School Admrs

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1975
Senate

44th LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
367	2/22/75	3/10/75	3/20/75					3/19/75	
372	2/25/75	3/11/75	3/19/75				3/18/75		
375	2/20/75	3/8/75	3/10/75				3/8/75		
383	2/15/75	3/8/75	3/10/75				3/8/75		
393	2/19/75	3/8/75	3/14/75				3/13/75		
395	3/4/75	3/15/75	3/19/75					3/18/75	
396	2/20/75	3/8/75	3/11/75					3/8/75	
397	2/20/75	3/8/75	3/11/75				3/8/75		
412	2/21/75	3/18/75	3/19/75					3/18/75	
419	2/19/75	3/10/75	3/11/75					3/10/75	
420	2/19/75	3/10/75	3/19/75					3/18/75	
455	2/28/75	3/12/75	3/13/75					3/12/75	
463	2/22/75	3/10/75	3/13/75					3/12/75	
468	2/19/75	3/10/75	3/13/75						3/12/75
471	2/20/75	3/13/75	3/14/75					3/13/75	
474	2/19/75	3/4/75	3/5/75					3/5/75	
496	2/27/75	3/14/75	3/20/75					3/19/75	

(Use Separate Sheet for Senate, House Bills and Resolutions)

MINUTES OF THE MEETING
SENATE JUDICIARY COMMITTEE
March 15, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:35 A.M. Senator Drake was absent. All other committee members were present.

The following bills were heard:

HB 8	HB 560
HB 10	HB 640
HB 395	HJR 35

HB 8 -- HB 8, sponsored by Representative Gail Stoltz of Distric 14, was heard first. She stated that the purpose of the bill, entitled the Montana Code of Fair Practices, was to eliminate discrimination by the State of Montana, on the basis of race, color, creed, sex, age, marital statu physical or mental handicap, national origin or ancestry The bill provides for complaints to be handled by the Human Rights Commission, and the House inserted an amend ment prohibiting the requirement that quotas be establis ed for representation of any group in state government.

Ms. Jan Gerke, representing Women's Lobby, Inc., stated that the bill would require that more than just lip serv would be paid to minority representation in government a added her support.

Ms. Margaret Davis, representing the Montana League of Women Voters, spoke in support of the bill, particularly the provisions concerning marital status and the mentall handicapped.

There were no further proponents and no opponents to the bill.

HB 10 -- HB 10, sponsored by Representative Dan Yardley of Distri 74, was heard next. Rep. Yardley stated that the bill, entitled the Uniform Parentage Act, was the product of a interim study, that the bill was designed to define and protect the parent-child relationship and that the bill provided for confidentiality in litigation concerning custody or other matters relating to the parent-child relationship. He added that section 25 of the bill conflicts with the provisions of HB 275 and is better than HB 275.

Pete Serdot of the Dept. of Social & Rehabilitation Serv stated that he had been working in the adoption area for years with the department and that the bill protects the rights of fathers, protects the rights of adoptive paren

HB 10 -- child custody matters. He conferred with Rep. [illegible] that the procedures and rights enumerated in the bill would conflict with HB 275 and added that HB 10 is a good bill by which to the rights of all parties involved in custody cases, particularly the children.

There were no further propoenents and no opponents to the bill.

HB 395 -- HB 395, sponsored by Representative Mike Meloy, District 29, was heard next. He stated that the purpose of the bill is to restore occupational licenses to individuals convicted of crimes after they are released from correctional institutions. He stated that the proposed law would give an opportunity to individuals who have paid their debt to society to reinstate themselves as citizens and taxpayers. He stated that this would help ex-felons with whom he had dealt that end up in prison again after release because they cannot obtain employment. He added that the bill is a direct implementation of a provision of the new Montana Constitution.

Bob Campbell, Chairman of the Correctional Facilities and Services Committee of the Montana Bar Assn., spoke briefly in support of the bill and submitted written testimony (attached).

Lee Topash spoke in favor of the bill, stating that under present law, time spent in prison is only a down payment, since ex-felons are forced to pay for their crimes for the rest of their lives. He stated that ex-felons should have an opportunity to do something useful with their lives after release and this bill would provide such an opportunity.

John Frankino of the Montana Catholic Conference stated that on the basis of his experience with community-based corrections he had concluded that former offenders should have occupational privileges restored upon release in order for rehabilitation to take place.

Curt Chisholm of the Department of Institutions, stated that a letter of support from the department was included in Mr. Campbell's testimony and that the department supports the bill because it would alleviate the problems faced by former offenders as they are reintegrated into society.

In closing, Rep. Meloy stated that under present law the State of Montana does not permit felons to pay their debt to society by working in the areas in which they were trained. Current law is not conducive to rehabilitation, a problem which would be rectified by the bill.

There were no further proponents and no opponents to the bill.

501 Western Bank Building • Missoula • Montana •59801 • Ph. 543-3005

H. B. 395--SENATE JUDICIARY COMMITTEE HEARING

TESTIMONY--MBA CORRECTIONAL FACILITIES AND SERVICES COMMITTEE

March 15, 1975

The Montana Bar Association's Correctional Facilities and Services Committee fully supports the implementation of Section 28 of Article II of the Montana Constitution entitled "RIGHTS OF THE CONVICTED", which states as follows:

> "FULL RIGHTS ARE RESTORED BY TERMINATION OF STATE SUPERVISION FOR ANY OFFENSE AGAINST THE STATE."

H. B. 395 provides the necessary first step in implementing this provision by removing from our licensing statutes the unconstitutional restrictions in which ex-offenders are now forbidden to ever engage in 33 occupations licensed by the state which are listed on the attached sheet.

Our Committee has received a wide variety of suggested improvements in our criminal justice system and has held a public hearing in the Montana Senate Chambers on December 7, 1974. From the best sources currently available we have concluded that this Bill is the most important single piece of legislation this session to improve criminal justice in Montana.

This Bill provides opportunities for reducing criminal behavior by providing the opportunity for meaningful employment for ex-offenders and is supported by the following organizations and individuals:

The Honorable Thomas Judge, Governor of Montana
Roger Crist, Warden, Montana State Prison
Robert T. O'Leary, Chairman, Board of Pardons
J. H. Baumgart, Probation Dept., Central Division Supervisor
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MONTANA Correctional Facilities and Services Committee

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This measure will fulfill the Constitutional guarantee that individuals, after serving a sentence, will be considered on their own ability and not be permanently barred from occupations in which they are qualified to work.

Your support of this Bill will be a first step in fulfilling our Constitutional promise to provide equality of opportunity for all the citizens of our state.

Robert J. Campbell

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Montana Bar Association
Correctional Facilities & Services Committee
501 Western Bank Building
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MONTANA Correctional Facilities and Services Committee

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Section 28. RIGHTS OF THE CONVICTED. Laws for the punishment of crime shall be founded on the principles of prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

COMMENTS

The committee voted unanimously to adopt this revision of former Article III, Section 24. In doing so, the committee recommends that once a person who has been convicted has served his sentence and is no longer under state supervision, he should be entitled to the restoration of all civil and political rights, including the right to vote, hold public office, and enter occupations which require state licensing. The committee believes that this is eminently proper and that the paramount concerns of prevention and reformation cannot be realized unless the ex-convict can readily move back into society as an equal participant in community affairs. Surely to rehabilitate one and attempt to insure that he has the opportunity to become a full member of the community requires that he be restored the same rights, privileges and immunities as other citizens. This provision does not speak to the rights of the incarcerated while they are in prison as did delegate proposal #98. It is not meant in any way to preclude them having all rights except those necessarily denied as a condition of their incarceration.

The committee also deleted reference to capital punishment. The reference to capital punishment is not necessary as it merely grants the legislature the power to do something it can do anyway. To delete this reference has no effect on the status of capital punishment in Montana; it remains in effect in those instances which the legislature provides. The committee rejected delegate

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ROGER W. CRIST, WARDEN

Montana State Prison

OFFICE OF THE WARDEN

DEER LODGE, MONTANA

59722

Nov. 26, 1974

Bob Campbell, Chairman
Montana Bar Association Committee On
Correctional Facilities & Services
501 Western Bank Building
Missoula, Montana 59801

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Very truly yours,

Roger W. Crist

ROGER W. CRIST, WARDEN

RWC/mn
cc: Joe Yankoskie, Director
Classification & Treatment

STATE OF MONTANA

AS L. JUDGE
VERNOR

BOBBY C. MILES, DIRECTOR
INTERSTATE COMPACT ADMINISTRATOR
DEER LODGE

BOARD OF PARDONS

PHONE 846-1404 -:- 1119 MAIN STREET
DEER LODGE, MONTANA 59722

December 17, 1974

Mr. Robert Campbell, Chairman
Montana Bar Association Correctional Services Committee
501 Western Building
Missoula, Montana 59801

Dear Mr. Campbell:

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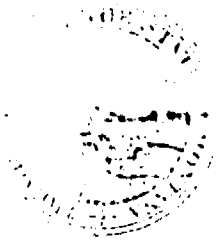
We earlier proposed to the Constitutional Convention Committee that the rights of the convicted felon be protected and were pleased that Section 28, as it pertains to those rights, was adopted by the committee and later ratified by the people on June 6, 1972. Therefore, we support any proposed legislative action to remove any occupational license restrictions such as are not required to protect society.

Sincerely yours,

BOARD OF PARDONS

Robert T. O'Leary

Robert T. O'Leary, Chairman



THOMAS L. JUDGE
GOVERNOR

State of Montana
Office of The Governor
Helena 59601

November 1, 1974

Mr. Robert J. Campbell
Attorney at Law
501 Western Bank Building
Missoula, Montana 59801

Dear Bob:

Thank you for your letter of October 23, 1974.

I have talked with Lee Tickell concerning the implementation of Article II, Section 28 of Montana's 1972 Constitution. The Personnel Division is proceeding with an affirmative action plan that will fully implement this constitutional provision. Lee will be contacting you within the next few days to advise you as to who will be appearing to explain the Division's activities in this area.

Sincerely,

Tom

THOMAS L. JUDGE
Governor

cc: Lee J. Tickell

STATE OF MONTANA

AS L. JUDGE
GNOR

ROBBY C. MILLS, DIRECTOR
INTERSTATE COMPACT ADMINISTRATOR
DEER LODGE

BOARD OF PARDONS

PHONE 846-1404 -:- 1119 MAIN STREET
DEER LODGE, MONTANA 59722

December 10, 1974

Mr. Robert Campbell, Chairman
Montana Bar Associations Correctional Facilities & Services Committee
501 Western Building
Missoula, Montana 59801

Attn: Mr. John Navarro

Dear Sir:

After my telephone conversation with Mr. John Navarro on December 5, 1974 concerning your efforts to have legislation passed this coming year to remove the statutes which prohibit offenders and ex-offenders from engaging in thirty four (34) different occupations in the State of Montana; I discussed your proposal at the Staff Meeting of the Central Division Parole Officers on December 6, 1974, and they are in favor of supporting such legislation.

Very truly yours,

J. H. Baumgart

J. H. Baumgart
Central Division Supervisor

cc: Board of Pardons
Mr. Henry Burgess
Bernie Driscoll
A. J. Marra
Sam Wilson
Richard Holzheimer
J. J. Skiba
File

SENATE COMMITTEE JUDICIARY

Date 3/15/75 House Bill No. 395 Time

	YES	NO
THOMAS E. TOWE	✓	✓
JOE B. ROBERTS	✓	
V. E. CETRONE	✓	
MARGARET S. WARDEN	✓	
ROBERT J. BROWN	✓	
GLEN L. DRAKE	✓	
JEAN A. TURNAGE	✓	
MICHAEL GREELY	✓	

Secretary

Chairman

Motion: By Senator Greely to adopt amendments as attached committee report.

(Include enough information on motion—put with yellow copy of committee report.)

SENATE COMMITTEE JUDICIARY

Date 3/19/75 House Bill No. 395 Time

Name	YES	NO
THOMAS E. TOWE	X	
JOE R. ROBERTS	X	
V. E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill A. Ryan
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Greely that HB 395 be concurred in as amended.

(include enough information on motion—put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

March 19 19 75

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 395

respectfully report as follows: That HOUSE Bill No. 395,

third reading, be amended as follows:

1. Amend title, lines 5 through 15.
Following: " "AN ACT"
Strike: lines 5 through 15 in their entirety
Insert: "TO PROVIDE THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO HAS SERVED HIS SENTENCE AND IS NO LONGER UNDSR STATE SUPERVISION MAY BE GRANTED THE PRIVILEGE OF OCCUPATIONAL LICENSURE; AND DEFINING LICENSURE AS A PRIVILEGE." "

2. Amend the bill, pages 1 through 52.
Strike: All of the bill following the enacting clause
Insert: "Section 1. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are

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2. Amend the bill, pages 1 through 52.
Strike: All of the bill following the enacting clause
Insert: "Section 1. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a

Chairman.

STATE PUB. CO.
Helena, Mont.

meaningful occupation, while the privilege of licensure is conferred with prudence to protect the interests of the public.

Section 2. Licensure defined as privilege. It is the intent of the legislature and the declared policy of the state that occupational licensure is a privilege to be granted or revoked as a police power of the state in its protection of the public health, safety and welfare and such privilege is not a right mentioned in article II, section 27 of the Montana constitution.

Section 3. Restoration of rights to felons. Laws for the punishment of crime shall be founded on the principles of prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

(1) "Full rights" as referred to in this section shall not preclude the denial of a license to enter an occupation when the conferring of a license may affect the public health, safety and welfare; the granting of such license is a privilege within the police power of the state and not a right mentioned in article II, section 27 of the Montana constitution.

Section 4. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense, if such criminal offense relates to the public health, safety and welfare and to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

Section 5. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed, wholly or partly on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

Section 6. Licensure on completion of supervision. Completion of probation or parole supervision, without any subsequent criminal conviction, shall be evidence of rehabilitation, provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure."

AND AS SO AMENDED, BE CONCURRED IN

THOMAS F. [illegible], Chairman

HOUSE BILL NO. 395

INTRODUCED BY MELOY, HOLMES, HUENNEKENS, BRADLEY, JAMES MOORE, DRISCOLL

A BILL FOR AN ACT ENTITLED: "AN ACT ~~AMENDING--SECTIONS 4-412,--15-2006,~~ 40-3329, ~~41-1429,-40-3329,-62-508,-66-112, 66-403,17,--66-518,--66-913,---66-1036,---66-1038,---66-1240, 66-1312,---66-1504,---66-1834,--66-1937,--66-2115,--66-2210, 66-2345,-66-2509,-66-2610,-66-2714,--66-3017,--66-3209,~~ AND ~~75-6010,--AND-93-2027, R.C.M.-1947,-TO-PROVIDE-THAT-A-PERSON CONVICTED--OF--A--CRIME--AND IS NO--LONGER---UNDER---STATE SUPERVISION-IS-RESTORED-THE-RIGHT-TO-PRACTICE-ANY-OCCUPATION REQUIRING--STATE--LICENSING,--AND--TO--PROVIDE-THAT-A-PERSON APPLYING-FOR-SUCH-A-LICENSE SHALL-NOT-BE--DENIED--A--LICENSE BECAUSE--OF--A-PREVIOUS-CONVICTION,~~ TO PROVIDE THAT A PERSON CONVICTED OF A CRIMINAL OFFENSE WHO HAS SERVED HIS SENTENCE AND IS NO LONGER UNDER STATE SUPERVISION MAY BE GRANTED THE PRIVILEGE OF OCCUPATIONAL LICENSURE; AND DEFINING LICENSURE AS A PRIVILEGE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

REFER TO SECOND READING

(Strike everything after the enacting clause and insert:)

Section 1. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while the privilege of licensure must be conferred with prudence to protect the interests of the public.

Section 2. Licensure defined as privilege. It is the intent of the legislature and the declared policy of the state that occupational licensure is a privilege to be granted or revoked as a police power of the state in its protection of the public health, safety and welfare and such privilege is not a right mentioned in Article II, section 28 of the Montana constitution.

Section 3. Restoration of rights to felons. Laws for the punishment of crime shall be founded on the principles of prevention and reformation and full rights shall be automatically restored upon termination of state supervision for any offense against the state.

(1) "Full rights" as referred to in this section shall not preclude the denial of a license to enter an occupation when the conferring of a license may affect the public health, safety and welfare; the granting of such license is a privilege within the police power of the state and not a right mentioned in Article II, section 28 of the Montana

constitution.

Section 4. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense, and such criminal offense relates to the public health, safety and welfare and to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

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occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

-End-